THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

WRIT APPEAL Nos.2179 OF 2005
&
2438 OF 2005

COMMON JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

The appellants in both the appeals are A.P.S.R.T.C., Nalgonda Region and Mahaboobnagar Region. The respondents who are the writ petitioners are working as drivers in the respective regions.

The issue involved in these appeals, is one and the same, these appeals are being disposed of by a common judgment.

The appellants have filed these appeals under Clause 15 of Letters Patent assailing the judgment of the learned Single Judge of this Court passed in W.P.No.18851 and 17103 of 2005 dated 25.8.2005 and 10.8.2005 respectively allowing the writ petitions filed by the respondents herein who are employees working as Drivers seeking for a mandamus as against the action of the appellants-respondents in not giving Special Grade/Stagnation increment to them on their completion of 12 years of service in the Corporation.

The case of the writ petitioners, in brief, is to the effect as stated in the affidavit filed in support of the respective writ petitions that they (writ petitioners in W.P.No:2179 of 2005) were initially appointed as a Drivers on 1.5.1991 at Ranga Reddy and Mahaboobnagar regions and later they were transferred to Nalgonda region at their request with loss of seniority but not on the loss of service in December, 1991. The petitioner in W.P.No:17103 of 2005 was appointed as driver on 1.8.1988 in Nalgonda Region and later on his request, he was transferred to Mahaboobnagar Region as per proceedings dated

20.10.1998. Therefore, from the date of initial appointment, all the respondents had completed more than 12 years of service in the Corporation and as such, they would be entitled to Special Grade/Stagnation Increment. However, the same is not being given to them apparently on the ground that the Corporation is proceeding on the assertion of requirement of completion of such period of 12 years in a particular region in the total service. Now, according to the writ petitioners, since they have completed 12 years of service in a category and due to stagnation, they would be entitled to such benefit as per Circular No. PD-30/2005 dated 4-6-2005 issued by the Corporation to the same effect. Thus, the action on the part of the appellants-Corporation in denying the service of the writ petitioners in the earlier region for calculation of required minimum period is not correct and they cannot instruct particular region and further it has been pointed that in the similar instances, this Court has already held that such employee of the Corporation who has completed 12 years would be entitled to the benefit. Hence the writ petitions.

On contest by the appellants-Corporation, the learned single judge allowed the writ petitions following the similar view held by the Division Bench of this Court as reported in REGIONAL MANAGER, APSRTC, HYDERABAD AND OTHERS v. N.B. VENKAIAH AND OTHERS ([1]) wherein this Court allowed the claim for stagnation increments on completion of 12 years of service based on settlement arrived at between the Management and the Union . This Court while following the decision of another Division Bench of this Court in W.A.No.1301 of 2000 dated 29-10-2002, pointed out that the said decision of the Division Bench was carried to the Supreme Court and the Supreme Court dismissed the special leave application filed by the appellants-Corporation and thus, the employee should get benefit.

In this appeal, the learned Standing Counsel appearing on behalf of the appellants-Corporation strenuously contended that the order of the learned single judge is not sustainable in view of the

settlement arrived at between the employees and the management on 13-5-2005 under Section 12 (3) of the Industrial Disputes Act whereunder such benefit was restricted only with effect from 1-4-2005 and that the circular bearing No.PD-30/2005 dated 4-6-2005 issued by the appellants-Corporation which is also binding on the respondents, has not been properly considered. Further, it is also her contention that in view of the settlement which is binding on all the employees including the respondents and which has remained unchallenged with any appropriate proceedings, all the employees including respondents-workmen are estopped from raising any dispute seeking fixation of pay in the stagnation grade and payment of consequential monetary benefits contrary to the said settlement.

The learned counsel appearing on behalf of the writ petitioners-respondents herein sought for dismissal of this appeal principally relying on the aforesaid two decisions of the Division Bench.

On consideration of the respective submissions made on either side and on perusal of the material available on record, the point that arises for consideration in this appeal is as to whether, under the facts and circumstances, the respondents who are the employees of the appellants-corporation are entitled to the said benefit of Special Grade/Stagnation increment of service.

There is no serious dispute with regard to the service of the writ petitioners-respondents herein who have been initially appointed long back at Rangareddy, Nalgonda and Mhaboobnagar and subsequently, they have been transferred to the other respective regions at their request with loss of seniority but not on the loss of service. It is also evident from two decisions of this Court as referred to above, one in W.A.No.1301 of 2000 which has been followed by the latter Division Bench reported in 2005 (3) ALD 389 (DB) that the plea raised on behalf of the appellants-Corporation seeking not to count the service rendered in any other division/region etc., was not found favour. It was held in the decision of the earlier Division Bench that such a

benefit cannot be denied that simply because the employee went to new division by agreeing to forego the past service rendered in the parent division in the matter of fixation of seniority in the concerned category in the transferee division, it cannot be said that he has agreed to forego the past service for all practical purposes. The Latter Division Bench simply following the decision of the earlier Division Bench, negatived the plea raised on behalf of the appellants regarding clarificatory circular No.PD-30/2005, dated 4-5-2005. Therefore, the case of the respondents herein as stated by their counsel is squarely covered by the aforesaid two decisions.

However, it has to be seen as to whether there is any consideration of the plea raised by the appellants-corporation as to the settlement arrived at between the employees and the management dated12-5-2005 under Section 12 (3) of the Act and the subsequent circular issued by the appellants-corporation dated 4-6-2005 as referred to above.

There is no single dispute on behalf of the respondents-employees in regard to either the said settlement or the latter circular issued. The settlement and the circular contemplate that the pay will be fixed notionally from the date of eligibility but the monetary benefit will be allowed consequent on such pay fixation with effect from 01-04-2005 only. Therefore, having regard to such agreed specific term as contained in the settlement, the pay of an employee shall be fixed notionally from the date of eligibility and the monetary benefit consequent on such pay fixation shall be paid 1-4-2005. It is needless to mention that common settlement which is entered into between the employees and the management under sub-section 3 of Section 12 of Industrial Disputes Act, will have a total binding on both the management as well as employees and therefore, the question of overlapping the agreement entered into between the management and the union, does not arise nor is permissible. Further having regard to such a restriction as to such entitlement, it is not open for any of the

employees to call back and claim the monetary benefit for such an entire period or any period prior to 1-4-2005 as agreed to in the said settlement. But, these aspects as to the existence of settlement and consequent circular which has reiterated the terms agreed to between the parties, have not come up for consideration before either of the aforesaid two Division Benches nor the settlement following up circular is subsequent to both the said decisions. Therefore, the entitlement of any such monetary benefit for the period prior to 1-4-2005, as held in the aforesaid two decisions, cannot be a valid proposition and it automatically gets superceded by the settlement as stated above and the benefit restricted w.e.f. 1-4-2005.

However, since the settlement and the circular are only subsequent events which took place subsequent to the aforesaid two decisions, the same are binding on the respondent. In view of the aforesaid settlement and the following circular, We hold that the respondents-writ petitioners are entitled to the monetary benefit only from 1-4-2005, but not prior thereto.

Writ Appeals are accordingly allowed partly modifying the orders of the learned single Judge by restricting the entitlement of the respondents only w.e.f. 1.4.2005, but not prior thereto.

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B. PRAKASH RAO, J

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G. YETHIRAJULU, J

22nd August, 2006.
dvs.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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(Common Judgment delivered by the Hon'ble Sri Justice B. Prakash Rao)

Dated 22 -08-2006

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[1] 2005 (3) ALD 389 (DB)